

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 4th day of March, two thousand eight.

PRESENT:

HON. ROSEMARY S. POOLER,
HON. BARRINGTON D. PARKER,
HON. PETER W. HALL,
Circuit Judges.

Rong Zheng,
Petitioner,

v.

07-2124-ag
NAC

MICHAEL B. MUKASEY,¹ ATTORNEY GENERAL,
Respondent.

¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto R. Gonzales as the respondent in this case.

FOR PETITIONER:

Tina Howe, New York, N.Y.

FOR RESPONDENT:

Peter D. Keisler, Assistant Attorney General, Civil Division; Lisa Arnold, Senior Litigation Counsel; Luis E. Perez, Attorney; Schwanda Rountree, Of Counsel, Office of Immigration Litigation, U.S. Department of Justice, Washington, D.C.

UPON DUE CONSIDERATION of this petition for review of a Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

Petitioner Rong Zheng, a citizen of the People's Republic of China, seeks review of a May 3, 2007 order of the BIA affirming the October 18, 2005 decision of Immigration Judge ("IJ") Douglas B. Schoppert denying Zhang's application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). *In re Rong Zheng*, No. A 98 769 708 (B.I.A. May 3, 2007), *aff'g* No. A 98 769 708 (Immig. Ct. N.Y. City, Oct. 18, 2005). We assume the parties' familiarity with the underlying facts and procedural history in this case.

When the BIA adopts the decision of the IJ and supplements the IJ's decision, this Court reviews the decision of the IJ as supplemented by the BIA. See *Yan Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). This Court reviews the agency's factual findings, including adverse credibility determinations, under the substantial evidence standard, treating them as "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B); see *Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004), *overruled in part on other grounds by Shi Liang Lin v. U.S. Dep't of Justice*, 494 F.3d 296, 305 (2d Cir. 2007). Particular deference is given to the trier of fact's assessment of demeanor. See *Majidi v. Gonzales*, 430 F.3d 77, 81 n.1 (2d Cir. 2005); *Zhou Yun Zhang*, 386 F.3d at 73-74. In addition, the Court generally will not disturb adverse credibility determinations that are "based on specific examples in the record of inconsistent

statements . . . about matters material to [an applicant's] claim of persecution, or on contradictory evidence or inherently improbable testimony regarding such matters." *Zhou Yun Zhang*, 386 F.3d at 74 (internal quotation marks omitted). Nevertheless, "the fact that the [agency] has relied primarily on credibility grounds in dismissing an asylum application cannot insulate the decision from review." *Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004). An adverse credibility determination must be based on "'specific, cogent' reasons" that "bear a legitimate nexus to the finding." *Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d Cir. 2003).

A review of the evidence in this case indicates that the agency's adverse credibility finding is supported by substantial evidence. Zheng testified that his wife had the x-ray performed because she wanted to obtain evidence to support his asylum application in the United States. He did not, however, explain why she went to the hospital to have the x-ray taken when her physical condition was "very bad," given that he did not need that documentation until he immigrated to the United States five-and-a-half years later. Accordingly, the IJ reasonably found it implausible that Zheng's wife had the x-ray taken only three days after she was forcibly sterilized and so long before Zheng immigrated to the United States, particularly given that she was in poor health. See *Siewe v. Gonzales*, 480 F.3d 160, 168-69 (2d Cir. 2007).

It was reasonable for the IJ to rely on the inconsistency between Zheng's testimony that his wife mailed him the x-ray in March 2005 and his submission of a U.S. physician's evaluation of the x-ray that was conducted in February 2005. Zheng claimed that he had remembered the date incorrectly. Given that his asylum application and testimony included specific dates for several events that had taken place some time ago, it was not unreasonable for the IJ to discredit Zheng's claim of faulty memory of an event that had taken place only six months previously. *Majidi*, 430 F.3d at 80-81. This discrepancy, though perhaps minor, further undermines Zheng's credibility. See *Tu Lin v. Gonzales*, 446 F.3d 395, 402 (2d Cir. 2006).

Additionally, Zheng's failure to submit his wife's sterilization certificate was another factor demonstrating

his lack of credibility. Because Zheng asserted that his wife received a sterilization certificate, yet failed to produce it in evidence, it was reasonable for the IJ to rely on the lack of this particular corroboration to support the adverse credibility finding. See *Liang Chen v. U.S. Attorney Gen.*, 454 F.3d 103, 107 (2d Cir. 2006).

The IJ found that the same photograph of Zheng's wife appearing on two documents, the U.S. physician's report and the x-ray taken six-and-a-half years earlier, "cast[s] further doubt . . . on the reliability of this evidence." Without more information, we cannot say that this was a reasonable inference to be drawn. See *Li Zu Guan v. INS*, 453 F.3d 129, 139 (2d Cir. 2006) (finding that the IJ's conclusion that the use of the same photograph on two documents reduced the applicant's credibility was an "unjustified assumption"). That said, considering the IJ's analysis as a whole, we find no basis to remand this case because we can confidently predict that on remand the agency would reach no different result. See *Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 339 (2d Cir. 2006); *Cao He Lin v. U.S. Dep't of Justice*, 428 F.3d 391, 401 (2d Cir. 2005).²

Because Zheng was unable to show the objective likelihood of persecution needed to make out an asylum claim, he was necessarily unable to meet the higher standard required to succeed on his claims for withholding of removal or relief under CAT that were based on the same factual predicate. See *Paul v. Gonzales*, 444 F.3d 148, 156-57 (2d Cir. 2006); *Gomez v. INS*, 947 F.2d 660, 665 (2d Cir. 1991). To the extent Zheng argued that he is eligible for CAT relief based on his illegal departure from China, he has failed to present a meaningful challenge to the agency's denial of relief on that basis and any such argument will be deemed waived. *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 541 n.1 (2d Cir. 2005).

² Because Zheng's claims for relief from persecution, as articulated in this record, are based solely on the assertion that his wife was sterilized, a ground that no longer lies following our decision in *Shi Liang Lin v. U.S. Dep't of Justice*, 494 F.3d 296, 308-10 (2d Cir. 2007) (en banc), which was issued after the petition in this case was filed, it is doubtful that Zheng's claim would survive on remand even if it were sent back to the agency for further consideration.

For the foregoing reasons, the petition for review is DENIED. As we have completed our review, any stay of removal that the Court previously granted in this petition is VACATED, and the pending motion for a stay of removal in this petition is DISMISSED as moot.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

By: _____